

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

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| IN THE MATTER OF: |) | |
| |) | |
| READOPTION OF 312 IAC 25 |) | Administrative Cause |
| GOVERNING COAL MINING AND |) | Number: 13-007R |
| RECLAMATION OPERATIONS |) | |
| |) | (LSA Document #13-125(F)) |

RECOMMENDATION FOR FINAL ACTION ON READOPTION OF RULE

A. INTRODUCTION

For consideration is the readoption of 312 IAC 25 governing coal mining and reclamation operations. This article includes Rule 1—definitions; Rule 2—general provisions; Rule 3—areas unsuitable for mining; rule 4—permitting procedures; Rule 5—bonding liability insurance; Rule 6—performance standards; Rule 7—inspection and enforcement procedures; Rule 8—restriction on financial interest of state employees; Rule 9—training, examination, and certification of blasters; Rule 10—reclamation division fund; reclamation fee. The text of 312 IAC 25 can be accessed through the Legislative Services Agency Internet site at:

<http://www.in.gov/legislative/iac/T03120/A00250.PDF?>.

In April 2002, the Natural Resources Commission approved delegations of authority with respect to readoptions. Where the rules are being readopted in their current form without amendments the Director of the Division of Hearings may approve preliminary action. However, the Commission retained authority to take final action on readoptions.

The rules codified under 312 IAC 25 are proposed for readoption without amendment. The Director of the Division of Hearings approved preliminary action on January 8, 2013. It is the standard practice to readopt rules by article, and 312 IAC 25 is now submitted for consideration as to final action.

B. READOPTION ANALYSIS REQUIRED UNDER IND. CODE § 4-22-2.5-3.1

Brock A. Mayes, Assistant Director, with the Department of Natural Resources, Division of Reclamation, was appointed as the Small Business Regulatory Coordinator for this rule readoption. Mayes provided the following analyses of potential impacts to small business for the proposed readoption of 312 IAC 25:

Economic Impact Statement
LSA Document #13-125

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses
Estimated Number of Small Businesses Subject to this Rule:
312 IAC 25 Readoption

In 2012 there were 13 coal companies that actively mined coal in Indiana. One of the thirteen companies might qualify as “small business” as defined in IC 4-22-2-28.1(d).

The Natural Resources Commission has the authority to adopt rules under IC 14-10-2-4 and IC 14-22-2-6. The Department of Natural Resources (DNR) estimates that no new financial burden will be forced on small businesses by the readoption of 312 IAC 25.

Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Small Businesses Will Incur for Compliance:
The DNR estimates that no new annual administrative costs would be incurred by a small business to comply with the readoption of 312 IAC 25.

Estimated Total Annual Economic Impact on Small Businesses to Comply:
The DNR estimates that there will be no new annual economic impact on small businesses as a result of the readoption of 312 IAC 25.

Justification Statement of Requirement or Cost:
No justification is required as a result of readoption of 312 IAC 25 is expressly required by both statute and federal law.

Regulatory Flexibility Analysis of Alternative Methods:
No consideration was required by the Division for alternative methods for the purpose of readoption of 312 IAC 25.

MOST RECENT SMALL BUSINESS IMPACT ANALYSIS
REVIEW UNDER IC 4-22-2.5-3.1
LSA Document #13-125

The degree to which the factors analyzed in a previous economic impact statement have changed since the statement was prepared

The Department of Natural Resources (DNR), Division of Reclamation reports no changes in the factors previously analyzed in 2010 concerning impacts on “small businesses” coal operators as a result of the readoption of 312 IAC 25.

Any regulatory alternatives included in the statement under IC 4-22-2.1-5(a)(5)

No consideration was required by the Division for regulatory alternatives. Statutory provisions mandate the IDNR to implement Indiana’s Surface Mining Act. Readoption is necessary to maintain primacy from the federal government and for Indiana to maintain federal grant receipts of what is currently approximately \$18 million annually.

Any regulatory alternatives not considered by the agency at the time the statement was prepared could be implemented to replace one (1) or more of the rule's existing requirements

Given the determination of no economic impact, there were no alternative methods considered.

Executive Order 13-03 requires agencies to “suspend rulemaking action on any proposed rules for which a notice of intent to adopt a rule...was not submitted to the office of the *Indiana Register* on or before January 14, 2013.” The requirements of Executive Order 13-03 were restated, along with additional compliance information in Financial Management Circular 2013-01. On March 12, 2013 the Director of the Department of Natural Resources, Robert E. Carter, submitted correspondence to the Office of Management and Budget seeking an exception from the moratorium. In a letter dated March 15, 2013, Christopher D. Atkins, Director, Office of Management and Budget, provided a written determination that the proposed rule readoption “qualifies for an exception under Section 6(c) of Executive Order 13-03.”

As specified by Executive Order 2-89 and Financial Management Circular 2010-4, fiscal analyses of the rule proposal were submitted, along with a copy of the proposed rule language and a copy of the posted Notice of Intent, to the Office of Management and Budget on March 28, 2013. In a letter dated July 12, 2013 and delivered to the Commission’s Division of Hearings on July 16, 2013 Christopher D. Atkins, Director, Office of Management and Budget, recommended that the proposed rule amendments be approved.

C. NOTICE OF INTENT TO READOPT AND RECOMMENDATION FOR FINAL ACTION

On March 27, 2013, the “Notice of Intent to Readopt” 312 IAC 25 was posted to the *Indiana Register* at 20130327-IR-312130125RNA as anticipated by Ind. Code § 4-22-2.5-2 and Ind. Code § 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 25 without changes. The notice also provided that a person had 30 days to submit a written request to the Natural Resources Commission, through the Small Business Regulatory Coordinator, seeking to have a particular section of the rule readopted separately. If such a request had been made, the Commission would have been required to complete the full rule adoption process for the section requested to be readopted separately.

In this instance, no written request has been received. The Commission may either submit the rule for filing with the Publisher under Ind. Code § 4-22-2-35 or elect the procedure for readoption under Ind. Code § 4-22-2. It is recommended that the Commission approve for readoption 312 IAC 25, without amendment for subsequent filing with the Publisher.

Dated: July 17, 2013

Sandra L. Jensen
Hearing Officer